

OGC REVIEW
COMPLETED

7 May 1959

STATINTL

MEMORANDUM FOR:

Deputy Director, Personnel

SUBJECT:

Support for Employee Organizations

1. This memorandum is in reply to your request for the source or sources of legislative authority for a government agency to provide space and other forms of logistical support to employee organizations. You also asked for a synopsis and citations of Comptroller General rulings on the extent to which a government agency can support activities of employee organizations in the form of (a) space and other logistical support, (b) employee services during duty hours, and (c) payroll deductions.

2. In general, the use of appropriated funds for employee organizations, unless expressly authorized in the Appropriation Act, is restricted by 31 USC 628 which provides: "Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they were respectively made, and for no others." In a series of decisions listed below, the Comptroller General, on the basis of 31 USC 628, has denied the expenditure of funds for the purchase or rental of recreational property or the payment for services relating to recreational supervision. The use of funds for these purposes has been denied in spite of the dearth of such facilities at the employee's base, or the effect on the morale of employees in the absence of such facilities.

3. The following four Comptroller General opinions should be of interest to you: 18 Comp. Gen. 147; 27 Comp. Gen. 679 and unpublished opinions B-37344, dated 14 October 1943, and B-49169, dated 5 May 1945. These opinions have not been modified or superceded by any later Comptroller General opinions.

18 Comp. Gen. 147 - Comptroller General's opinion was requested on the suitability of providing recreational facilities for civilian employees engaged in a river and harbor project at Midway Island. There were no civilian recreational facilities available on the island. Nevertheless, the Comptroller General held: "The use of appropriated funds for the furnishing of recreational and entertainment facilities for Government personnel is unauthorized in the absence of specific statutory authority or authority by necessary implication, notwithstanding it may be highly desirable to furnish such facilities because of the absence thereof otherwise and the location of the work--in this case, a river and harbor appropriation project at Midway Island.

"... while it appears that the proposed expenditures would provide recreational and entertainment facilities for the employees, there has been no showing made or even any allegations that such expenditures are reasonably within the purview of the appropriation for rivers and harbors improvements proposed to be used for the prosecution of the project in question, or that such expenditures are essential in, or even reasonably incident to prosecuting the project."

27 Comp. Gen. 679 - The Navy Department, seeking to provide a recreational supervisor for its civilian employees, relied for authority to expend such sums upon an Executive Order which stated, "The head of each agency in accordance with applicable statutes, Executive Orders, and rules, shall be responsible for personnel management in his agency."

The Comptroller General held: "While recreational and entertainment programs for civilian employees at field activities of the Navy Department may be administratively desirable, they have at most only an indirect bearing upon the purposes for which the Department's appropriations were made, and, in the absence of a clear legislative expression that appropriated funds be used in connection with such programs, the use thereof for the payment of salaries of civilian personnel--either on a full time or part time basis--to develop, organize, and supervise employee recreational activities is not authorized."

B-37344 - In a decision of 14 October 1943 (B-37344) the Comptroller General disapproved a voucher in the sum of \$34.50 for the purchase of basketballs, baseballs, and other inexpensive recreational facilities to be used in civilian employee camps located in a national forest under the U. S. Forest Service. The camp in question was located more than a one hour drive from any community and it was contended that boredom from the lack of recreational facilities was causing a large and expensive labor turnover in a tight labor market.

The Service relied for authority upon this language in their appropriation act: "Sums may be expended for expenses necessary to enable the Secretary to carry out the purposes of the Act entitled 'an Act for forest protection against the white pine blister rust.'"

The Comptroller General held: "While the furnishing of such equipment may be highly desirable, particularly under the conditions set forth in the statement of the Acting Regional Forester, they constitute expenses which are personal to the employees rather than chargeable to appropriated funds."

B-49169 - The Comptroller General disallowed a voucher in the sum of \$15.30 submitted by a certifying officer of the Bonneville Power Administration for the rental of a movie film. This film was to be used for entertaining employees at a camp where there was no

permanent population, no stores, no post office, and no facilities for recreation and entertainment. The closest town was 35 miles distant.

The disbursing officer stated familiarity with 18 Comp. Gen. 147 but felt that since the Bonneville Act granted the Administrator authority to make "such expenditures for offices, vehicles, furnishings, equipment, supplies and books, for attendance at meetings, and such other facilities and services as he may find necessary for the proper administration of the Act", such an expenditure was legitimate.

Notwithstanding the broad terms of this authority, the Comptroller, again referred to 31 USC 628 and stated: "Since there is nothing in the appropriation . . . which reasonably may be construed as making the appropriation available for the furnishing of entertainment facilities to its employees, there would appear to be no sound basis for departing from the rule of 18 Comp. Gen. 147 and such being the case, it must be held that an expenditure of the nature here involved is not authorized."

4. The control and allotment of space in public buildings in the District of Columbia is covered by statute and is found in 40 USCA 1 which reads:

"The Administrator of General Services shall have the absolute control of and the allotment of all space in the several public buildings owned or buildings leased by the United States in the District of Columbia, with the exception of the Executive Mansion and office of the President, Capitol Building, the Senate and House Office Buildings, the Capitol power plant, the buildings under the jurisdiction of the Regents of the Smithsonian Institution, and the Congressional Library Building, and shall from time to time assign and allot, for the use of the several activities of the Government, all such space."

As a rule, the General Services Administration (GSA) has the legal right to control all space in the buildings occupied by this Agency and further to determine how that space is to be used. The Comptroller General, in a report to Congress, dated 10 August 1949 (B-45101), pointed out that there are limitations on the use of government property where Congress has not specifically authorized the use of property to which a government agency may wish to put it. GSA can and has delegated the responsibility to use certain properties to the head of a particular government agency. However, this does not limit the general rule and, as the Comptroller General emphasized in his report: ". . . the use of public property and funds . . . without fair reimbursement to the Government would appear objectionable per se." His argument may be summarized as: "The question with the accounting officers of the Government is not the apparent general administrative objectives on which public property and funds are expended, but whether the Congress, controlling the public purse, has by law authorized the expenditure."

5. In the case of the Credit Union, the basis for agency support is statutory. Section 1771 of Title 12 USCA reads as follows:

"Upon application by any credit union organized under State law or by any Federal credit union organized in accordance with the terms of this chapter, the membership of which is composed exclusively of Federal employees and members of their families, which application shall be addressed to the officer or agency of the United States charged with the allotment of space in the Federal buildings in the community or district in which said credit union or Federal credit union does business, such officer or agency may in his or its discretion allot space to such credit union if space is available without charge for rent or services."

6. The use of the services of Federal employees during official working hours for the collection of funds for various charity drives and of monthly payments for Group Hospitalization, Incorporated, for example, has been recognized by the Comptroller General as a proper exercise of administrative discretion with respect to the performance of duty of employees. However, the approval of the Comptroller General would not be forthcoming if employees were hired specifically for or devoted substantial periods of time to such purposes (31 Comp. Gen. 641, 642).

7. In the matter of payroll deductions, three provisions in the federal statutes establish a firm legislative policy against the making of deductions from the salaries of employees of the departments and agencies of the Federal Government. These provisions are found in Title 31 of the United States Code, sections 203, 492 and 628. There are several opinions of the Comptroller General on this point, including 31 Comp. Gen. 647, 32 Comp. Gen. 572 and 35 Comp. Gen. 641. The last cited opinion contains a good summary of the rulings on this point from which we quote:

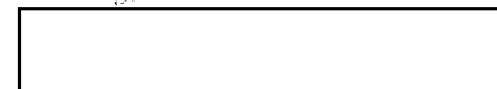
"However, the diversion of portions of the salaries of Federal employees by means of payroll deductions before payment to the employees is, of course, an entirely different matter. Generally, such deductions may be made only pursuant to specific statutory authorization as, for instance, those now being made for Federal income taxes, certain State income taxes, payments under the Federal Employees Group Life Insurance Act of 1954, 5 USC 2091 Note, civil service retirement contributions, etc. Several proposals heretofore have been made to our Office for establishing procedures for payroll deductions from the compensation of Federal employees for union dues, payments to charitable and other private organizations, and for group medical, health, and life insurance activities. However, all such plans in the absence of specific authorization therefor by law were disapproved as being in contravention of the provisions of sections 3477 and 3620 of the Revised Statutes, as amended, 31 USC 203 and 492, which respectively (1) prohibit the assignment of claims against the United States and (2) require the public moneys to be drawn only in favor of the persons to whom payment is to be made. The purpose and intent of such provisions are that the Government must deal only with its own creditors and that it may not be held accountable to strangers to its transactions. Also, such procedures have been held to contravene section 3678 of the Revised Statutes, as amended, 31 USC 628, which provides in plain and unequivocal terms that appropriations shall

be used solely to accomplish the objectives for which they are made and for no other purposes, and to violate the general public policy against making the Government a collection agency for private organizations."

8. Unfortunately, it is difficult in these areas to come to a specific conclusion without having specific facts at hand. This is especially true in dealing with situations arising in connection with the mission of this Agency where security considerations or uniqueness of operations might justify certain action in the support of employee organizations which otherwise would be prevented by the rulings cited above.

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Office of General Counsel

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20 MAR 1953

MEMORANDUM FOR: General Counsel

ATTENTION : Mr.

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It would be helpful in the completion of studies being made on the activities of GEHA and the Federal Credit Union if I could isolate the source or sources of legislative authority for a government agency to provide space and other forms of logistical support to employee organizations.

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In addition, I would appreciate a synopsis and citations of significant Comptroller General rulings which perhaps have determined the extent to which the normal government agency can support the activities of employee organizations in the form of:

- (a) Space and other logistical support
- (b) Employee services during duty hours
- (c) Payroll deductions

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Deputy Director of Personnel